

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DOCKET NO: 05 CV 11718 RGS

COLLETTE BRIGHTMAN,)	
Plaintiff,)	
)	
v.)	<u>JOINT MOTION TO MODIFY</u>
)	<u>SCHEDULING ORDER</u>
J.C. PENNEY CORPORATION, INC.,)	
Defendant.)	
)	

Now Come the parties, and pursuant to Rule 1.02(g) of the Expense and Delay Reduction Plan of this Court, request a modification of this Court's Scheduling Order of October 31, 2005 to allow an additional 90 days for the disclosure of expert witnesses from the current dates of July 31, 2006 (plaintiff) and September 15, 2006 (defendant). The proposed new dates for disclosure of experts would be October 31, 2006 (plaintiff) and December 15, 2006 (defendant).

As grounds therefore, the parties state as follows:

1. Good cause exists to grant the requested modification to the Scheduling Order, which requests a 90 day extension for the parties to disclose expert witness. At this point, the parties have been engaged cooperatively in continued discovery, namely further depositions that were noticed before the expiration of the discovery deadline of June 30, 2006, but were not taken before that date due to scheduling considerations. In addition, several fact witnesses are no longer employed by the defendant corporation. The most recent deposition took place on September 6, 2006. Plaintiff has indicated that she wishes to conduct two additional depositions. As such, discovery has yet to be completed, and is anticipated to continue beyond the deadlines for disclosure of experts by both parties.

2. Plaintiff has yet to make any formal disclosure of an expert witness. However, plaintiff has informally disclosed Dr. Jeremy Stern, the plaintiff's treating surgeon, as her medical expert. Plaintiff has produced treatment records from Dr. Stern, but has yet to provide an anticipated narrative report from him. The plaintiff has requested a narrative report from him summarizing his anticipated opinion and is currently awaiting same. Defendant would wish to see any such report before making its disclosure of its anticipated expert testimony.

3. There is no pre-trial conference or trial date scheduled.

4. This is the first request by any party for a modification of the Scheduling Order.

5. Counsel for J.C. Penney attaches a supporting affidavit hereto.

WHEREFORE, for the foregoing reasons, the parties request that this Court allow the within Joint Motion to Modify Scheduling Order.

The Plaintiff, Collette Brightman,	The Defendant, J.C. Penney Corporation, Inc., By its attorneys,
Scott D. Peterson, Esquire Healy & Healy, P.C. 15 Walnut Street Wellesley Hills, MA 02481 (781) 431-0040	Richard R. Eurich, BBO #156600 Philip M. Hirshberg, BBO #567234 MORRISON MAHONEY LLP 250 Summer Street Boston, MA 02210-1181 (617) 439-7500

CERTIFICATE OF SERVICE

I hereby certify that this document has been electronically filed, and served upon all counsel of record in compliance with the Fed. R. Civ. P., this 14th day of September, 2006.

/s/ Philip M. Hirshberg

Philip M. Hirshberg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DOCKET NO: 05 CV 11718 RGS

COLLETTE BRIGHTMAN,)	AFFIDAVIT OF PHILIP M. HIRSHBERG IN SUPPORT OF MOTION TO MODIFY SCHEDULING ORDER
Plaintiff,)	
v.)	
J.C. PENNEY CORPORATION, INC.,)	
Defendant.)	
)	

I, Philip M. Hirshberg, under the pains and penalties of perjury, make the following affidavit upon personal knowledge:

1. I, along with Richard R. Eurich, am counsel of record for defendant, J.C. Penney Corporation (“J.C. Penney”), in the above matter.

2. The parties have been cooperatively engaged in continued discovery, namely further depositions that were noticed before the expiration of the discovery deadline of June 30, 2006, but were not taken before that date due to scheduling considerations. The most recent deposition took place on September 6, 2006. Plaintiff has indicated that she wishes to conduct two additional depositions. As such, discovery has yet to be completed, and is anticipated to continue beyond the deadline for disclosure of experts by both parties.

3. Plaintiff has yet to make any formal disclosure of an expert witness. Plaintiff, through counsel, has indicated that she intends to disclose Dr. Jeremy Stern as a medical expert. Plaintiff has produced treatment records from Dr. Stern, but has yet to provide a narrative report from him. Defendant would wish to see any such report before making its disclosures.

4. This is the first request by any party for a modification of the Scheduling Order.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY, THIS 14th DAY OF
SEPTEMBER, 2006.

/s/ Philip M. Hirshberg

Philip M. Hirshberg

CERTIFICATE OF SERVICE

I hereby certify that this document has been electronically filed, and served upon all counsel of record in compliance with the Fed. R. Civ. P., this 14th day of September, 2006.

/s/ Philip M. Hirshberg

Philip M. Hirshberg